

SWIGART LAW GROUP, APC
Joshua B. Swigart (SBN 225557)
Josh@SwigartLawGroup.com
2221 Camino del Rio S, Ste 308
San Diego, CA 92108
P: 866-219-3343
F: 866-219-8344

BEN TRAVIS LAW, APC
Ben Travis (SBN 305641)
ben@bentravislaw.com
4660 La Jolla Village Drive, Suite 100
San Diego, CA 92122
P: 619-353-7966

*Attorneys for Plaintiff
Benson Pai*

**ARIAS SANGUINETTI WANG
& TEAM LLP**
Mike Arias (CSB #115385)
Craig S. Momita (CSB #163347)
M. Anthony Jenkins (CSB #171958)
6701 Center Drive West, Suite 1400
Los Angeles, CA 90045
Telephone: (310) 844-9696
Facsimile: (310) 861-0168
mike@aswtlawyers.com
craig@aswtlawyers.com
anthony@aswtlawyers.com

*Attorneys for Plaintiff
Tony Mata*

**MORGAN, LEWIS & BOCKIUS
LLP**
Joseph Duffy, Bar No. 241854
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071
T: +1.213.612.2500
F: +1.213.612.2501
joseph.duffy@morganlewis.com

**FRESHFIELDS BRUCKHAUS
DERINGER US LLP**
Gayle R. Klein (SBN 237975)
Gayle.Klein@freshfields.com
601 Lexington Ave., 31st Floor
New York, NY 10022
P: 212-230-4645

*Attorneys for Defendant
Tesla, Inc.*

COHELAN KHOURY & SINGER
Timothy D. Cohelan (SBN 60827)
tcohelan@ckslaw.com
Isam C. Khoury (SBN 58759)
ikhoury@ckslaw.com
Rosemary C. Khoury (SBN 331307)
rkhoury@ckslaw.com
605 C Street, Suite 200
San Diego, CA 92101
Telephone: (619) 595-3001/Facsimile:
(619) 595-3000

*Attorneys for Plaintiff
Darnell Williams*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

1 BENSON PAI, an individual, on behalf
2 of himself and all others similarly
situated,

3 Plaintiff,

4 vs.

5 TESLA, INC., d/b/a TESLA MOTORS,
6 INC.,

7 Defendant.

No.: 3:23-cv-04550-JD

Assigned to: Hon. James Donato

**JOINT CASE MANAGEMENT
STATEMENT**

8
9
10 TONY MATA, individually and on
11 behalf of others similarly situated,

12 Plaintiff,

13 vs.

14 TESLA, INC., doing business in
15 California as TESLA MOTORS, INC.;
16 and DOES 1 through 10, Inclusive,
17

18 Defendants.

No.: 4:23-cv-04626-JD

Assigned to: Hon. James Donato

19 DARNELL WILLIAMS, individually
20 and on behalf of all others similarly
21 situated,

22 Plaintiff,

23 vs.

24 TESLA, INC.,

25 Defendant.
26
27
28

No.: 3:23-cv-04832-JD

Assigned to: Hon. James Donato

Pursuant to Federal Rule of Civil Procedure 26(f), Plaintiffs Benson Pai, Tony Mata, and Darnell Williams (“Plaintiffs”) and Defendant Tesla Inc. (“Tesla” or “Defendant”) (jointly, the “Parties”) jointly lodge the following report.

RELEVANT BACKGROUND INFORMATION

The three actions captioned above (the “Actions”) each relate to the same subject matter and purport to represent similar putative classes. *Pai* and *Williams* already were assigned to this Court. *Mata* was pending before a different judge. Given the similarity of the Actions, on December 4, 2023, the Parties submitted a Joint Administrative Motion to Consider Whether Cases Should Be Related (ECF No. 12) and a Joint Stipulation to Consolidate Related Actions and Set Deadlines (ECF No. 13). On December 11, 2023, the Court related all three Actions and reassigned *Mata* to this Court. The parties have conferred and agree that it would be most judicially efficient to consolidate all three actions into the *Pai* action and have the three named plaintiffs file an omnibus complaint to which Tesla may then respond.

1. JURISDICTION AND SERVICE

The *Pai* complaint asserts causes of action for: (1) negligence; (2) invasion of privacy; (3) breach of implied contract; (4) breach of fiduciary duty; (5) breach of confidence; (6) violation of the California Unfair Competition Law (Cal. Business & Professions Code § 17200, et seq.) (“UCL”); (7) violation of the California Customer Records Act (“CCRA”) (Cal. Civ. Code § 1798.80, et seq.), and (8) violation of the California Consumer Privacy Act (“CCPA”) as a result of a data incident occurring on or about August 18, 2023 (the “Data Incident”).

The *Mata* complaint alleges causes of action for: (1) negligence; (2) violation of the CCRA; (3) violation of the California Constitution’s right to privacy; (3) violation of the CCPA; and (4) violation of the UCL, as a result of the Data Incident.

The *Williams* complaint asserts causes of action for: (1) violation of the CCPA; (2) violation of the CCRA; (3) violation of the Confidentiality of Medical

1 Information Act (Cal. Civ. Code § 56, et seq.); (4) violation of the UCL; and (5)
 2 negligence, as a result of the data incident.

3 Plaintiffs allege the court has subject matter jurisdiction pursuant to the Class
 4 Action Fairness Act, 28 U.S.C. 1332(d) (“CAFA”), as Plaintiffs (California) and
 5 Defendant (Texas/Delaware) are diverse, there are over 100 alleged class members,
 6 and the amount in controversy exceeds \$5 million. Defendant was served in all
 7 three Actions and has made an appearance by counsel.

8 Defendant does not dispute that, if this case is justiciable in this court, the
 9 Court has subject matter jurisdiction pursuant to CAFA. However, Defendant does
 10 not concede that the action is justiciable herein. Prior to each Plaintiff commencing
 11 his employment with Defendant, he executed an arbitration agreement stating
 12 clearly that he would pursue any and all claims arising out of or relating to his
 13 employment in a binding arbitration administered by JAMS. Among other reasons,
 14 given that this matter arises out of information that Plaintiffs provided Defendant
 15 solely for the purpose of gaining employment, it arises out of and relates to his
 16 employment. Accordingly, in the first instance, Defendant intends to move to
 17 compel arbitration, which Plaintiffs have indicated that they will dispute.

18 2. FACTS

19 Plaintiffs: On or around August 18, 2023, Defendant issued a Notice of Data
 20 Breach (the “Notice”) notifying employees of an incident involving potential
 21 unauthorized access to personal information. Specifically, Defendant’s Notice
 22 stated, in part, “we are writing to tell you about a data incident that involved your
 23 information,” and informed them, in part, of “**What Happened [¶]** A foreign media
 24 outlet (named Handelsblatt) informed Tesla on May 10, 2023 that it had obtained
 25 Tesla confidential information. The investigation revealed that two former Tesla
 26 employees misappropriated the information ... and shared it with the media outlet.”
 27 (3:23-cv-04832-KAW, ECF 1-1.) Defendant provided this Notice to an undisclosed
 28 number of individuals, including the Plaintiffs. Each Plaintiff received the August

1 2023 Notice from Defendant on or about August 18, 2023, informing him that his
2 Sensitive Information was present in the affected Tesla systems. The Notice
3 indicated the following information may have been compromised: name, certain
4 contact information (such as address, phone number, and/or email address), date of
5 birth and social security number. Plaintiff Williams also alleges that certain
6 medical information may have been compromised. The Actions followed.

7 Defendant: This action involves a data incident where the perpetrators were
8 not anonymous hackers seeking to profit by selling personal data on the dark web,
9 but former Norway-based employees of the Defendant who abused their access and
10 shared information with a German media outlet, Handelsblatt, for attention.
11 Defendant contends that the Plaintiffs have not alleged that they have been harmed
12 or even have any tangible risk of future harm. Instead, the Class Action Complaints
13 and documents incorporated by reference therein demonstrate that Handelsblatt
14 does not intend to publish any employee information and, in any event, is legally
15 prohibited from publishing it. The Complaints further enunciate that Tesla
16 identified the perpetrators, caused the authorities to seize their electronic devices,
17 and obtained court orders that prohibit these two bad actors from further use or
18 dissemination of the data, subject to criminal penalties. And Tesla went even
19 further. It not only provided Plaintiffs with notice that their personal information
20 may have been involved in the incident, but also offered them complimentary credit
21 monitoring, identity detection, and resolution services. Instead of taking advantage
22 of those free services, Plaintiffs filed these lawsuits lacking any reasonable basis
23 that they suffered any actual injury, and thus standing, and in violation of their
24 employment agreements in which they agreed to arbitrate any dispute arising out
25 of or relating to their employment with Tesla on an individual basis.

26 3. LEGAL ISSUES

27 The Parties dispute whether these actions are justiciable herein or whether they
28 must be arbitrated. The Parties further dispute whether Plaintiffs have failed to state

1 a claim, primarily because they dispute whether Plaintiffs have alleged that they
2 have suffered any cognizable injury. The Parties also dispute whether these actions
3 may be appropriately maintained as class actions.

4 4. MOTIONS

5 Pending motions include a Joint Stipulation to Consolidate Related Actions
6 and Set Deadlines (ECF No. 13). The Parties anticipate Defendant will file a
7 motion to compel arbitration and to dismiss the action for failure to state a claim.
8 Plaintiffs also anticipate filing a Motion for Class Certification.

9 5. AMENDMENT OF PLEADINGS

10 The Parties have jointly requested in the Joint Stipulation to Consolidate
11 Related Actions and Set Deadlines (ECF. No. 13) that Plaintiffs be permitted to file
12 an amended, consolidated complaint.

13 6. EVIDENCE PRESERVATION

14 The Parties have reviewed the Guidelines Relating to the Discovery of
15 Electronically Stored Information (“ESI Guidelines”) and confirm that they have
16 met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and
17 proportionate steps taken to preserve evidence relevant to the issues reasonably
18 evident in this action.

19 7. DISCLOSURES

20 The Parties have agreed given the pending consolidation motion to exchange
21 initial disclosures pursuant to Fed. R. Civ. P. 26 no later than 30 days after the initial
22 case management conference.

23 8. DISCOVERY

24 No discovery has taken place to date. The Parties have not yet discussed
25 entering into a stipulated e-discovery order but will discuss should the need for such
26 an order arise.

27 Defendant proposes phased discovery, with limited class certification
28 discovery to occur first. Plaintiffs do not agree to phase discovery. Plaintiffs intend

1 to seek discovery from Defendant and third-parties focused on the data incident,
2 Defendant's security policies and procedures, and Defendant's actions after the data
3 incident was discovered. Moreover, because certain facts of the Data Breach that
4 give rise to Plaintiffs' claims occurred in Norway and Germany, third-party
5 discovery will likely require the taking of discovery via the Hague Convention.
6 Plaintiffs intend to propound written discovery, conduct depositions and issue
7 subpoenas to third-parties.

8 Defendant opposes discovery on the merits of the claims prior to class
9 certification, and instead proposes phased discovery, with limited class certification
10 discovery to occur first. Defendant's position is that phased discovery would be
11 most efficient and avoid unnecessary costs, given that none of the discovery
12 Plaintiffs intend to seek relates to the elements of class certification, and Defendant
13 intends to argue that class certification would be improper.

14 9. CLASS ACTION

15 Defendant proposes that the Court first rule on Defendant's motion to compel
16 arbitration or, alternatively, to dismiss. Should the Court deny same, the Parties
17 will proceed according to a schedule for determination of class certification, which
18 provides for a period of time for limited class certification discovery as well as
19 briefing and a hearing on the merits.

20 Plaintiffs disagree that dispositive motions should be ruled upon first and
21 propose that class certification discovery not proceed separately from merits
22 discovery.

23 All attorneys of record for the Parties have reviewed the Procedural Guidance
24 for Class Action Settlements.

25 10. RELATED CASES

26 As described above, the three Actions are related. A separate lawsuit arising
27 from the same incident, *Cobb v. Tesla, Inc.*, is pending in the Court of Common
28 Pleas in Pennsylvania, with case number 231202254.

11. RELIEF

Plaintiffs seek the following forms of relief:

- a) Class certification under FRCP 23;
- b) Injunctive relief including but not limited to, injunctive and other equitable relief as is necessary to protect the interests of Plaintiff and Class members;
- c) An award of compensatory, statutory, and nominal damages in an amount to be determined;
- d) An award for equitable relief requiring restitution and disgorgement of the revenues wrongfully retained as a result of Defendant's wrongful conduct;
- e) An award of reasonable attorneys' fees, costs, and litigation expenses, as allowable by law; and
- f) Such other and further relief as this Court may deem just and proper.

12. SETTLEMENT AND ADR

There have been no settlement or ADR discussions to date. The Parties respectfully submit that it is appropriate to consider ADR following a ruling on the upcoming dispositive motions.

13. OTHER REFERENCES

Defendant contends that this action is suitable for reference to binding arbitration. Plaintiffs disagree.

14. NARROWING OF ISSUES

The Parties have identified that the following issues can be narrowed by motion: (1) whether the Actions are subject to binding arbitration; (2) whether Plaintiffs may maintain the Actions as a class, not only based upon Rule 23, but also based upon their employment agreements, in which Defendant alleges they agreed to pursue claims on an individual basis and not as representatives of a class;

1 and (3) whether Plaintiffs have suffered any cognizable damage sufficient to confer
2 standing or otherwise state a claim.

3 15. PROPOSED SCHEDULES

4 The Parties offer their competing proposed schedules below. The Parties note
5 that both schedules propose a trial date that is more than 18 months from the initial
6 case management conference, because the Parties anticipate additional time will be
7 required for discovery given that facts that allegedly give rise to Plaintiffs' claims
8 occurred in Norway and Germany and will likely require the taking of discovery
9 via the Hague Convention.

10 Plaintiffs' proposed schedule includes merits discovery and provides
11 additional time for class certification. Defendants propose class certification
12 discovery close on December 19, 2024, and Plaintiffs oppose setting this deadline
13 as Plaintiffs oppose the phasing of discovery and this deadline would interfere with
14 Plaintiff's ability to complete necessary discovery of entities and persons with
15 knowledge of material facts known to reside outside of the United States.
16 Additionally, if the Court resets the hearing date or otherwise does not rule on the
17 motion to compel arbitration by July 19, 2024, Plaintiff may request that the
18 scheduling order be modified for good cause to allow more time for discovery,
19 including continuing the class certification briefing dates. Defendant's proposed
20 schedule includes a shorter period for class certification and would limit discovery
21 only to matters reasonably connected to class certification prior to the Court's ruling
22 on class certification.

23 Additionally, Defendant respectfully requests ten additional pages for its
24 anticipated motion to compel arbitration or, in the alternative, to dismiss so that it
25 may bring both motions in one brief given that they are interrelated, and Plaintiffs
26 do not oppose this request.

27 Differences in the Parties' proposed schedules are highlighted in red font
28 below.

Deadline	Plaintiffs' Proposal	Defendant's Proposal
Plaintiffs shall file an omnibus complaint	March 21, 2024	March 21, 2024
Defendant shall answer, move or otherwise respond to the complaint	April 25, 2024 (and Defendant may have 25 pages for its opening brief)	April 25, 2024 (and Defendant may have 25 pages for its opening brief)
Plaintiffs shall file their opposition to any such motion	May 30, 2024 (and Plaintiffs may have 25 pages for their opposition)	May 30, 2024 (and Plaintiffs may have 25 pages for their opposition)
Defendant shall file its reply to the opposition	June 20, 2025 (and Defendant may have 15 pages for the reply)	June 20, 2025 (and Defendant may have 15 pages for the reply)
Defendant shall notice its motion for hearing for this date	July 19, 2024 (if the Court resets the hearing date or otherwise does not rule on the motion by July 19, 2024, Plaintiff may request that the scheduling order be modified for good cause to allow more time for discovery, including continuing the class certification briefing dates)	July 19, 2024 (if the Court resets the hearing date or otherwise does not rule on the motion by July 19, 2024, Plaintiff may request that the scheduling order be modified for good cause to allow more time for discovery, including continuing the class certification briefing dates)
Class certification discovery shall close	N/A	December 19, 2024
Plaintiffs shall file their class certification brief	February 27, 2025	January 9, 2025
Defendant shall file its opposition to class	April 24, 2025	February 27, 2025
Plaintiffs shall file their reply to Tesla's opposition to class certification	June 19, 2025	March 20, 2025
Plaintiffs shall notice their class certification motion for hearing on this date	July 17, 2025	April 3, 2025
Fact discovery shall close	January 22, 2026	December 19, 2025
Plaintiffs shall serve their expert reports	February 27, 2026	January 22, 2026
Defendant shall serve its expert reports	March 26, 2026	March 26, 2026
Expert discovery shall close	April 23, 2026	April 23, 2026

Summary judgment motions shall be filed	May 21, 2026	May 21, 2026
Oppositions to summary judgment motions shall be filed	July 9, 2026	July 9, 2026
Replies to oppositions to summary judgment motions shall be filed	July 30, 2026	July 30, 2026
Federal Rule of Civil Procedure 26 pretrial disclosures and Daubert motions shall be filed	October 5, 2026	October 5, 2026
Oppositions and objections to pretrial disclosures and Daubert motions shall be filed	October 19, 2026	October 19, 2026
Trial on the merits	November 9, 2026	November 9, 2026

16. TRIAL

Defendant contends that the case must be tried to an arbitrator. Plaintiffs contend that this is a jury proceeding and anticipate the trial will take two weeks.

17. DISCLOSURE OF NON-PARTY INTERESTED PERSONS

The Parties have filed their Certifications of Interested Entities or Persons. There are no persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.

18. PROFESSIONAL CONDUCT

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

19. OTHER

1 Matters that may facilitate the just, speedy and inexpensive disposition of this
2 matter includes consolidating these actions, and entering the scheduling order as set
3 forth above including a deadline for the filing of an omnibus consolidated
4 complaint.

5
6 Dated: February 15, 2024

SWIGART LAW GROUP, APC

7 By /s/ Joshua Swigart

8 Joshua B. Swigart

9 *Attorneys for Plaintiff Benson Pai
and the alleged class*

10 Dated: February 15, 2024

ARIAS SANGUINETTI WANG &
TEAM LLP

11 By /s/ Craig S. Momita

12 Craig S. Momita

13 *Attorneys for Plaintiff Tony Mata
and the alleged class*

14
15 Dated: February 15, 2024

COHELAN KHOURY & SINGER

16 By /s/ Patrick N. Keegan

17 Patrick N. Keegan

18 *Attorneys for Plaintiff Darnell
Williams and the alleged class*

19
20 Dated: February 15, 2024

FRESHFIELDS BRUCKHAUS
DERINGER US LLP

21 By /s/ Gayle R. Klein

22 Gayle R. Klein

23 *Attorneys for Defendant Tesla, Inc.*

FILER'S ATTESTATION

Pursuant to Local Rule 5-1(i)(3) regarding signatures, I attest that all other signatories listed, and on whose behalf this filing is submitted, concur in the document's content, and have authorized the filing.

Dated: February 15, 2024

FRESHFIELDS BRUCKHAUS
DERINGER US LLP

By /s/ Gayle R. Klein
Gayle R. Klein

Attorneys for Defendant Tesla, Inc.

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT &
PROPOSED ORDER is approved as the Case Management Order for
this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated:

UNITED STATES DISTRICT JUDGE